

CHARLES A. BARRON

JANUARY 31, 1956.—Committed to the Committee of the Whole House and ordered to be printed

Mr. LANE, from the Committee on the Judiciary, submitted the following

R E P O R T

[To accompany H. R. 3733]

The Committee on the Judiciary, to whom was referred the bill H. R. 3733 for the relief of Charles A. Barron, having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

The purpose of the proposed legislation is to relieve Charles A. Barron of all liability to refund to the United States the sum of \$864.96. Such sum represents the amount of overpayment of basic compensation received by him as a result of his appointment in contravention of existing law and regulations, to the position of ordnance inspector (general), grade GS-7, Office of the Naval Inspector of Ordnance, Philadelphia, Pa. The bill further authorizes the Secretary of the Treasury to pay Mr. Barron the amount that has been withheld or repaid by him.

STATEMENT OF FACTS

The Judge Advocate General of the Navy in his report to this committee, dated September 30, 1955, gives in detail the history of this proposed legislation and states that he had no objection to the enactment of this bill. Therefore, after careful consideration, your committee concurs in the recommendation of the Judge Advocate General of the Navy and recommends favorable consideration of the bill.

Letter from the Navy is attached hereto and is as follows:

DEPARTMENT OF THE NAVY,
OFFICE OF THE JUDGE ADVOCATE GENERAL,
Washington 25, D. C., September 30, 1955.

HON. EMANUEL CELLER,
Chairman, Committee on the Judiciary,
House of Representatives, Washington 25, D. C.

MY DEAR MR. CHAIRMAN: Reference is made to your letter of June 10, 1955, to the Secretary of the Navy requesting comment on H. R. 3733, a bill for the relief of Charles A. Barron.

The purpose of this proposal is to relieve Mr. Barron of all liability to refund to the United States the sum of \$864.96. The aforementioned sum represents the amount of overpayment of basic compensation received by Mr. Barron as a result of his appointment, in contravention of existing law and regulations, to the position of ordnance inspector (general), grade GS-7, Office of the Naval Inspector of Ordnance, Philadelphia, Pa.

A review of records available to the Department of the Navy discloses that on December 7, 1951, Mr. Barron was separated from the Veterans' Administration, where he had served as a fiscal account clerk, GS-4. On December 10, 1951, he was given an indefinite appointment (in lieu of reinstatement) to the position of ordnance inspector (general), GS-7, at a salary of \$4,205 per annum. On December 21, 1952, Mr. Barron received a salary step increase to \$4,330 per annum.

Section 1310 (c) of the Supplemental Appropriations Act of 1952 (65 Stat. 758), provides that no person whose position is subject to the Classification Act of 1949, as amended, shall be promoted or transferred to a higher grade subject to such act without having served at least 1 year in the next lower grade. The foregoing section then provides that regulations may provide for promotions of 2 grades in 1 year under certain enumerated circumstances. Mr. Barron's appointment involved a promotion of three grades and was, therefore, a clear violation of the Supplemental Appropriations Act of 1952. The appointment error was compounded by the fact that Mr. Barron did not meet the qualification standards for the position, nor was he assigned to ordnance inspector duties. He was assigned as assistant facilities supervisor.

In May 1953, the aforementioned appointment error came to the attention of the Assistant Naval Inspector of Ordnance, who then consulted with representatives of the Examining and Placement Division of the third regional office of the Civil Service Commission. As a result, a new position description was prepared. On May 29, 1953, the area wage and classification office classified this description as "General supply clerk, GS-2001-6." On June 7, 1953, Mr. Barron was placed in this position at a salary of \$4,295 per annum.

On June 18, 1953, the first Civil Service Commission inspection was conducted. The inspector did not feel that the foregoing corrective action fully compensated for the illegal appointment. The case was, therefore, presented to the central office of the Civil Service Commission for resolution. It was further referred to the General Accounting Office. On March 2, 1954, letters of exceptions were prepared by the General Accounting Office and sent to the Comptroller, United States Naval Shipyard, Philadelphia 12, Pa., the fiscal office administering Mr. Barron's pay account. These exceptions made Mr. Barron liable for all salary payments in excess of the amount which would have been paid him had he been promoted on December 10, 1951, to the position of general supply clerk, GS-6, at a salary of \$3,795 per annum. The total amount of overpayment was computed to be \$864.96. Mr. Barron requested that his obligation be liquidated at the rate of \$10 per pay period and that any future periodic pay increases also be used to decrease his indebtedness. These amounts have been deducted from his salary by the Comptroller since that time.

It is considered that a combination of administrative errors resulted in the overpayment to Mr. Barron and that it is unfortunate that he should be penalized for his illegal appointment. He apparently entered into the appointment in good faith and received the overpayment in the same spirit. There is no indication that he was aware of or was in any way responsible for the improper actions resulting in the overpayment.

In view of the foregoing, the Department of the Navy interposes no objection to the enactment of H. R. 3733.

The Department of the Navy has been advised by the Bureau of the Budget that there is no objection to the submission of this report to the Congress. The

Bureau of the Budget further advises, however, that it is inclined to agree with the report by the Civil Service Commission, a copy of which is attached.

For the Secretary of the Navy.

Sincerely yours,

IRA H. NUNN,
*Rear Admiral, United States Navy,
Judge Advocate General of the Navy.*

UNITED STATES CIVIL SERVICE COMMISSION,
Washington 25, D. C., September 21, 1955.

MR. ROGER W. JONES,
*Assistant Director, Legislative Reference,
Bureau of the Budget, Washington 25, D. C.*

DEAR MR. JONES: This is in reply to your letter of August 16, 1955, requesting the Commission's comments on H. R. 3733, for the relief of Charles A. Barron, in connection with a report submitted by the Department of the Navy.

We have reviewed the Navy's recital of facts in the case of Mr. Barron and have confirmed it with our records. Mr. Barron had been appointed in 1951 in violation of the Whitten amendment and of Commission requirements. In 1953 the Navy discovered the administrative error and made correction by changing Mr. Barron to a lower grade. Also in 1953, the Commission in its regular inspection reviewed the case and reported the illegal payment of salary to the General Accounting Office. That Office computed the overpayment which the Navy had made to Mr. Barron and in accordance with usual procedure in cases of erroneous overpayment to an employee required refund of the amount involved.

We agree with the Navy that it is unfortunate that an employee should be penalized for an administrative error of an agency in making an illegal appointment resulting in overpayment to that employee. However, we cannot agree with the Navy in not opposing the enactment of this private bill. Through established practice and by rulings of the Comptroller General employees who have received overpayments of salary through administrative error are required to refund those overpayments. A private bill providing relief for one individual alone would be inequitable to other individuals who also are required through established practice to refund overpayments erroneously made to them.

For these reasons, the Commission opposes enactment of H. R. 3733.

By direction of the Commission,

Sincerely yours,

PHILIP YOUNG, *Chairman.*

RISING SUN, MD., May 28, 1954.

HON. EDWARD T. MILLER,
House Office Building, Washington, D. C.

DEAR SIR: In these trying times when Members of Congress are so very busy, I hesitate to bring my personal problem to your attention. However, since this is very important to me, I wonder if it is possible to secure legislative action in my behalf to correct an inequitable situation.

After serving in the Army Air Force from April 8, 1942, to December 12, 1945, and being honorably discharged with the rating of sergeant, I secured a position with the Veterans' Administration district office in Philadelphia, Pa., as a fiscal accounts clerk, GS-4 at \$3,495 per annum. On December 10, 1951, I was given an indefinite appointment to the position of ordnance inspector (general), GS-7, \$4,205 per annum, in the office of the Naval Inspector of Ordnance, Philadelphia, Pa. Approximately 1 year later, on December 21, 1952, I received a step increase of \$125 making my salary \$4,330 per annum.

In the early part of 1953, the regional office of the Third United States Civil Service District in Philadelphia notified the Office of the Naval Inspector of Ordnance in Philadelphia that, since my appointment involved a promotion of three grades, from GS-4 to GS-7, it was in direct violation of the Whitten amendment. The Civil Service regional office also stated that I did not meet the qualification standards for an ordnance inspector (general) position and that the GS-7 position description under which I was serving was not descriptive of my actual duties.

On May 29, 1953, the area wage classification office of the Fourth Naval District approved the classification of general supply clerk, GS-6, \$4,295 per

annum, in the Office of the Naval Inspector of Ordnance at Philadelphia and on June 7, 1953, I was changed to this lower grade.

The following excerpt is quoted from Report No. 513, dated July 27, 1953, from Mr. Robert F. Walsh, Civil Service Inspector to Director, Third United States Civil Service Region:

"However, this latest action does not fully cure the original illegal appointment. Circumstances are such that Mr. Barron could not have been promoted above the grade 6 level on December 10, 1951, and would not have been eligible for promotion to the grade 7 level until December 10, 1952. Actually, no appropriate grade 6 position existed in the organization until May 29, 1953. The inspector recommends that this case be presented to our central office to determine whether any further corrective action is necessary."

On March 9, 1954, the Office of the Naval Inspector of Ordnance prepared corrected notification of personnel action forms (standard form 50) which changed my original appointment from ordnance inspector (general, GS-7, \$4,205 per annum to general supply clerk, GS-6, \$3,795 per annum plus the 2 steps increases of \$125 each to which I was entitled which brought my salary to \$4,045 per annum. This action was based on letters of exception from the United States General Accounting Office, Regional Audit Office, Philadelphia, Pa., which will be discussed in the following two paragraphs.

Letters from the General Accounting Office were serial Nos. DA-FFC-FO 01021, 4Q0001, and DA-FFC-FO 01021, 4Q0002 of March 2, 1954, to the comptroller's office of the United States Naval Shipyard at Philadelphia and the opening paragraph, which was identical in each letter, I am quoting for your information:

"The appointment on December 10, 1951, of Charles A. Barron as an ordnance inspector, grade GS-7, was in contravention of the act of November 1, 1951, as amended (Whitten amendment). All subsequent actions were contingent on the above initial action. His indefinite appointment by the Department of the Navy on December 10, 1951, could not have been more under the applicable regulations than the minimum rate of a grade GS-6 position, \$3,795, per annum, with salary step increases effective December 21, 1952, to \$3,920 per annum and December 20, 1953, to \$4,045 per annum."

These letters also listed the amounts it is alleged that I was overpaid, the total on the first (4Q0001) which listed pay periods from December 23, 1951 to January 5, 1952, to February 1-14, 1953, being \$488.87 and the total on the second letter (4Q0002) listing pay periods from March 1-14, 1953, for a total of \$366.48 or a grand total of \$855.35 which the General Accounting Office says I have been overpaid by the United States Government.

On March 9, 1954, after a conference with Lt. J. I. Moon, associate disbursing officer of the comptroller's office of the United States Naval Shipyard at Philadelphia, I wrote a letter to the Comptroller's Office requesting that \$10 be deducted from each paycheck to meet this obligation and also requested that any future pay increases be used to liquidate this obligation.

I do not question the legality of this claim but I do question its justice. I accepted this appointment in good faith and when the administrative error was discovered I accepted the reduction in grade without complaint. I do contend that a reimbursement by me to the Government of \$855.35 overpaid to me through an administrative error based on a technicality is inequitable and unjust. I have performed the work assigned to me and have had satisfactory efficient ratings since accepting this appointment.

I am appealing to you for relief from this claim because I am convinced that the only corrective action must be by legislation. This is indicated by the latest of two conflicting decisions of the Comptroller General, the decisive paragraphs of which I will quote in the following paragraphs of this letter.

Navy Civilian Personnel Instructions (NCPI), paragraph 160.2-7 (c) quotes 28 Comp. Gen. 514; B-82805 of March 14, 1949, as follows:

"De facto status: In any case where the employee is found by the Civil Service Commission not to be qualified for the position but there is no evidence of bad faith or fraud either on the part of the employee or the administrative officials involved, the employee properly may be considered as serving in a de facto status under the unauthorized personnel action and permitted to retain compensation received by him prior to the time such error is brought to the attention of the administrative officials."

The above decision appears to be abrogated by the Decision of Comptroller General B-113784 of May 8, 1953, in which Comptroller General Warren's summation of decisions involving various questions of overpayment to civilian

employees submitted to him by the Administrator of Veterans' Affairs is as follows:

"However, to protect the interests of the Government to the full extent possible under the statute (Note: Act of August 3, 1950, Public Law 633, 64 Stat. 393 which authorizes the withholding of current compensation from Government personnel for purposes of effecting reimbursement of indebtedness to the United States), where overpayments have been made, proper administrative efforts should be made to explain to the employee the error and to secure a refund from him of the amount involved or his acquiescence to offsetting the overpayments from his current pay over a reasonable period considering the amount involved. Also, appropriate notations should be made in the records so that consideration may be given to recovery of the amounts from final salary which may come due to the employee. Where the consent of the employee cannot be secured by administrative efforts, this Office, upon request of the administrative office will formalize the exception and promptly issue a certificate of settlement so that salary thereafter becoming payable may, in accordance with Public Law 633, be withheld."

I will be 39 years of age on July 1, 1954, I have a wife and two small children and am paying for a home near Rising Sun, Md., and the salary deduction is an expensive burden to me. There is general agreement that there is no bad faith or fraud involved and I am just an innocent victim of unfortunate circumstances.

I therefore respectfully request you to give me your opinion concerning the merit of my case and if you can do anything to help me I will greatly appreciate it.

Very truly yours,

CHARLES A. BARRON.

RISING SUN, MD., August 30, 1955.

HON. EDWARD T. MILLER,
Member of Congress, Easton, Md.

DEAR SIR: With some hesitation and with an apology for intruding upon your time, I again take the liberty of writing to you for any additional information pertaining to the bill which you prepared and submitted so graciously and efficiently in my behalf. I realize there might be a possibility of a small bill like mine being forgotten in the press and hubbub of the congressional adjournment period without final action being taken.

Official correspondence on this matter has come through the Office of the Naval Inspector of Ordnance, where I am employed, during the last several months. The first letter was a request from the Chief of the Bureau of Ordnance, Department of the Navy, dated June 23, 1955, requesting comments from the naval inspector on the conditions leading up to this situation. On June 28, the naval inspector, Lt. Comdr. Wayne D. Surface, replied and recommended that official approval be given to the action specified in the bill. The next and final letter was a copy, dated July 7, 1955, from the Chief of the Bureau of Ordnance, Admiral Withington, to the Office of the Judge Advocate General of the Navy, in which he recommended that favorable action be taken on the bill.

In view of this favorable correspondence, I presumed that favorable action by Congress was practically assured. In the event that no final action has been taken, I wish to say that I and my family and my wife's family are still grateful to you for your efforts in my behalf.

With best wishes to you, I remain,

Sincerely yours,

CHARLES A. BARRON.

RISING SUN, MD., January 24, 1955.

HON. EDWARD T. MILLER,
*Congress of the United States,
House of Representatives, Washington, D. C.*

MY DEAR MR. MILLER: In accordance with your letter of January 21, 1955, concerning deductions from my salary, I am enclosing herewith a statement from the disbursing officer of the Philadelphia Naval Base showing payments made and the balance due December 20, 1954.

These deductions are through the pay period ending December 18, 1954, and each pay period consists of 14 calendar days. Additional deductions of \$13 each have been taken from salary due for the periods ending January 1, 1955, and

January 15, 1955, respectively and this amount will be deducted from each succeeding pay period until the entire amount is paid or I am relieved of this responsibility.

Thanking you for your interest and kindness in this matter, I remain,
Respectfully yours,

CHARLES A. BARRON.

PHILADELPHIA NAVAL SHIPYARD,
NAVAL BASE,
Philadelphia 12, Pa., December 30, 1954.

Mr. CHARLES A. BARRON,
Care of Naval Inspector of Ordnance,
Midvale Co., Philadelphia 40, Pa.

MY DEAR MR. BARRON: The following information is furnished to acquaint you with the current status of collections in your pay account. The original overpayment figure of \$864.96 recorded via United States General Accounting Office exceptions 4-Q0001 and 4-Q0002 has been reduced to a balance due of \$644.13 by payroll actions in 1954 through the period ending 18 December.

A summarization of these transactions follows:

Overpayment of salary	-----	\$864.96
Recovery of 1954 overpayment via reduction in 1954 earnings	\$48.05	
Recovery of overpayment via \$10 collection in each of 15 pay periods	150.00	
Recovery of overpayment via \$13 collection in 1 pay period	13.00	
Recovery of overpayment via \$9.78 credit to retirement account (\$163×6 percent)	9.78	
	-----	220.83
Balance due Dec. 20, 1954	-----	644.13

In confirmation of telephone conversation between yourself and Mr. Calhoun of this activity, it was agreed that the pay period collection be increased from \$10 to \$13 effective with period ending December 18, 1954.

By direction of the commander:

Very truly yours,

JEAN I. MOON,
Lieutenant, SC, United States Navy, Disbursing Officer.

UNITED STATES CIVIL SERVICE COMMISSION,
Washington 25, D. C., July 21, 1954.

Hon. EDWARD T. MILLER,
House of Representatives.

DEAR CONGRESSMAN: This is in reply to your letters of June 14 and July 6, 1954, with reference to the case of Charles A. Barron.

The facts in this case are as follows:

In an inspection made by our regional office in Philadelphia of the Office of Naval Inspector of Ordnance, Philadelphia, Pa., our inspector found that Mr. Barron had been given an indefinite appointment on December 10, 1951, to the position of ordnance inspector (general), GS-7, \$4,205 per annum. This employee was separated from the Veterans' Administration as of close of business December 7, 1951, where he served as a fiscal account clerk, GS-4. Since this action involved a promotion of three grades, it was in direct violation of the Whitten amendment. On June 7, 1953, the agency took corrective action insofar as civil-service requirements were concerned and changed Mr. Barron to a lower grade by placing him in the position of general supply clerk, GS-6.

In view of the fact that in this case there appeared to be a matter of illegal payment of salary, and as such matters are under the jurisdiction of the General Accounting Office, the Civil Service Commission reported the facts to the General Accounting Office on August 21, 1953. Subsequent to this referral, the General Accounting Office called the Commission and asked that a determination be made as to the earliest possible date Mr. Barron could have been qualified for the promotion. After referring the matter to our third regional office, the General Accounting Office was advised that insofar as civil-service requirements were concerned, Mr. Barron could have been qualified on November 10, 1952. It was further pointed out, however, that the GS-6 position was not established

and classified until May 29, 1953, and ordinarily a position must be established and classified as a basis for salary payment.

As indicated above, the agency has taken corrective action in this case insofar as Civil Service Commission regulations are concerned. The matter of repayment of salary for the time that Mr. Barron served illegally in the higher grade position is a matter completely under the jurisdiction of the General Accounting Office. I suggest, therefore, that this phase of the case be referred to that Office for a determination as to whether any further consideration may be given, aside from legislative relief, to Mr. Barron's situation.

Sincerely,

GEORGE M. MOORE, *Commissioner.*

RISING SUN, MD., *June 28, 1954.*

HON. EDWARD T. MILLER,
House Office Building, Washington, D. C.

DEAR SIR: In reference to my case which you have in your possession, I am forwarding a letter which was written to me by the executive officer on duty during the time the problem arose.

I hope this will in some way help out my case.

Sincerely yours,

CHARLES A. BARRON.

LOVETT & THIBEAULT,
ATTORNEYS AT LAW,
Boston, Mass., June 24, 1954.

MR. CHARLES A. BARRON,
Rising Sun, Md.

DEAR CHARLIE: Your letter was received a few days ago and we were very happy to hear from you. The family is well. I hope that yours is happy and healthy. One of these days or months we are going to get an opportunity to get together.

I am writing this letter specifically to record my recollections for you of the events relating to your downgrading and the possibility that you may be required to repay a part of the salary received while employed at the GS-7 level.

During the time that I was attached to the naval inspector of ordnance, Philadelphia, and serving as executive officer, it was brought to the attention of the naval inspector by a personnel man from the Bureau of Ordnance that certain personnel actions might be irregular. These actions had been taken between 1 and 4 years prior to the time that they were discovered during a routine review of personnel files by the aforementioned representative of BuOrd.

Shortly after this information and advice was given, the then naval inspector was released to inactive duty. I became naval inspector, acting, for a period of little more than a month pending the reporting of the new regularly assigned naval inspector. During that time I went to the Civil Service Commission regional director's office in Philadelphia to get advice and assistance with a view toward correcting any irregularities which might exist in the organization. One of the problems about which I sought advice was in regard to your situation.

I was not successful in obtaining any positive information as to exactly what course to follow; therefore, recourse was had to the instructions then contained in NCPI. The best definition I could find indicated that you were to be considered in a de facto status. Shortly after that, you were reassigned to a position at the GS-6 level. I believe that the action was taken shortly after the arrival of the new naval inspector. With the information at hand, it was believed that the action taken was corrective of a previous irregular action. You were qualified for the position to which appointed and the appointment appeared to be within the scope of the Whitten Act.

The question of any repayment of salary seemed to be clearly disposed of by the provisions of the NCPI which stated in substance that de facto employees should not be so penalized unless some fraudulent intent on the part of the employee was involved in the appointment. I had at that time no question in my mind and I have none at this time that you had any such fraudulent intent. You advised me that you had questioned the regularity of the appointment when it was first executed and you were advised by your superiors that it was proper. You evidenced every willingness in my presence to arrive at the proper solution of the problem when I first became aware of it.

You mentioned in your letter that you have requested your Congressman, Hon. Edward T. Miller, to look into this matter. You have my permission to show him this letter or furnish him a copy of it.

There has been considerable criticism of Government employees in recent years, some of which is clearly justified. However, I want to say to you that, in my experience, I found you to be a trained, capable, efficient, and willing worker. I believe that more civil servants of your caliber would be a distinct asset to the Government. I do not believe that you should be required to repay wages which you earned in good faith. Let me know if there is anything further I can do to assist you in this situation.

As ever,

GEORGE.

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